

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Bernd Schessl et al.  
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Examiner: Jason Mark Heckert  
Title: DEVICE FOR FITTING AN OBJECT IN A DISHWASHER

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**APPEAL BRIEF**

Pursuant to 37 CFR §41.37, Appellants hereby file an appeal brief in the above-identified application. This Appeal Brief is accompanied by the requisite fee set forth in 37 CFR §41.20(b)(2).

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 1-8 are cancelled. Claims 9-28 are pending in this application. The final rejection of claims 9-28 is being appealed. Claims 9, 15, 16 and 25 are independent.

(4) STATUS OF AMENDMENTS

In response to the Office Action dated November 27, 2009, Appellants filed an Amendment A dated January 20, 2010, traversing the rejections, amending claims 12-16, and adding claims 17-28. The April 7, 2010, Final Office Action acknowledges Amendment A. No Amendments are outstanding. Appellants filed a Notice of Appeal on June 11, 2010.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

A first exemplary embodiment, as defined by, for example, independent claim 9, is directed to a fixing device for fixing the location of an object in a dishwasher (page 1, line 5), comprising: a first section (page 4, line 29; reference number 1, Fig. 1) that can be coupled to a crockery basket of the dishwasher (Fig. 2); and a second section (page 4, line 31; reference number 2, Fig. 1) extending substantially vertically forming a curve (page 4, line 32), the first

section being substantially non-rotating (page 2, lines 16, 17; Figs. 1,2) and being capable of being coupled to a vertical element (page 2, lines 17, 18; reference number 3, Fig. 2) of the crockery basket.

A second exemplary embodiment, as defined by, for example, independent claim 15, is directed to a fixing device for fixing the location of an object in a dishwasher (page 1, line 5), comprising: a first section (page 4, line 29; reference number 1, Fig. 1) that can be coupled to a crockery basket of the dishwasher (Fig. 2); and a second section (page 4, line 31; reference number 2, Fig. 1) extending substantially vertically forming a curve (page 4, line 32), the first section being connectable to a cutlery basket (Fig. 2) of a dishwasher, wherein the second section is a retaining clip interrupted along its vertical axis (page 5, lines 2, 3; reference number 4, 5, Fig. 1) in such a manner that a vertical basket element can be guided through this interrupted section (Figs. 1, 2), and an end region of the second section is solid (page 5, line 3; reference number 7, Fig. 1) such that it is not interrupted along the vertical axis of the second section, the end region being located at an end of the second section opposite the first section (Fig. 1).

A third exemplary embodiment, as defined by, for example, independent claim 16, is directed to a fixing device for fixing the location of an object in a dishwasher (page 1, line 5), comprising: a first section (page 4, line 29; reference number 1, Fig. 1) that can be coupled to a crockery basket of the dishwasher (Fig. 2); and a second section (page 4, line 31; reference number 2, Fig. 1) extending substantially vertically forming a curve (page 4, line 32), the first section being non-detachably connectable (page 4, line 16) to a region of the crockery basket (Fig. 2), wherein the second section is a retaining clip interrupted along its vertical axis (page 5, lines 2, 3; reference number 4, 5, Fig. 1) in such a manner that a vertical basket element can be guided through this interrupted section (Figs. 1, 2), and an end region of the second section is solid (page 5, line 3; reference number 7, Fig. 1) such that it is not interrupted along the vertical axis of the second section, the end region being located at an end of the second section opposite the first section (Fig. 1).

A fourth exemplary embodiment, as defined by, for example, independent claim 25, is directed to a crockery basket (Fig. 2) for use in a dishwasher, comprising: a plurality of vertical basket elements (page 5, lines 25, 26; reference number 3, Fig. 2); a fixing device for fixing the location of an object in the basket (page 1, line 5), the fixing device having a first section (page 4, line 29; reference number 1, Fig. 1) that is coupled to the basket; and a second section (page 4, line 31; reference number 2, Fig. 1) extending substantially vertically forming a curve (page 4, line 32), wherein the second section is a retaining clip interrupted along its vertical axis defining two arms (page 5, lines 2, 3; reference number 4, 5, Fig. 1), the arms being adapted to receive one of the vertical basket elements in between the two arms (Figs. 1, 2), and an end region of the second section is solid (page 5, line 3; reference number 7, Fig. 1) such that it is not interrupted along the vertical axis of the second section, the end region being located at an end of the second section opposite the first section and being attached to the two arms (Fig. 1).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A) Whether claims 9-11 are unpatentable under 35 U.S.C. §102(b) over U.S. Patent No. 3,289,854 (the Kauffman reference)
- B) Whether claims 9-11, 14 and 18 are unpatentable under 35 U.S.C. §102(b) over U.S. Patent No. 5,918,749 (the Pille reference)
- C) Whether claims 12, 13 and 15-28 are unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 3,289,854 (the Kauffman reference) in view of U.S. Patent No. 4,927,033 (the Patera reference)

(7) ARGUMENT

- A) Claims 9-11 are patentable under 35 U.S.C. §102(b) over U.S. Patent

No. 3,289,854 (the Kauffman reference)

The Office Action rejects claims 9-11 under 35 U.S.C. §102(b) over the Kauffman reference. Applicants respectfully traverse this rejection.

i) Claims 9-11

Claim 9 includes the feature of the first section being substantially non-rotating and being capable of being coupled to a vertical element of the crockery basket. In contrast, the removable embodiment of article retaining device 24 of Kauffman is not disclosed as being non-rotating. The welded or fixed embodiment of Kauffman is not capable of being coupled to an element of the crockery basket because it is fixed to an element of the crockery basket. As a result, Applicants submit that Kauffman does not disclose a fixing device having a first section that is both substantially non-rotating and capable of being coupled to an element of the crockery basket.

Claims 10 and 11 depend from claim 9.

In view of the foregoing, Applicants respectfully submit that Kauffman does not disclose each and every feature of claims 9-11 and therefore rejection under 35 USC §102(b) is inappropriate.

Applicants respectfully request reversal of this rejection.

B) Claims 9-11, 14 and 18 are patentable under 35 U.S.C. §102(b) over U.S. Patent No. 5,918,749 (the Pille reference)

The Office Action rejects claims 9-11, 14 and 18 under 35 U.S.C. §102(b) over the Pille reference. Applicants respectfully traverse this rejection.

i) Claims 9-11

Claim 9 includes the feature of the first section being substantially non-rotating. In contrast, the rack accessory of Pille is not disclosed as being non-rotating. All of the attachment mechanisms of Pille (cap 54, collars 56, and clips 34) would allow the rack accessory to rotate around tine 34.

Claims 10, 11 depend from claim 9.

ii) Claim 14

Claim 14 includes the feature of a retaining region that points away from the vertical basket element in the direction of the second section embodied as a retaining clip. In contrast, arm 48 of Pille does not point in the direction of the Office Action defined second section (rack accessory 36) of Pille (see Fig. 5).

iii) Claim 18

Claim 18 includes the feature of a retaining region protruding from the first section and located between the first section and the second section. In contrast, the Office Action defined retaining region (arm 48) of Pille is not located between the Office Action defined first section (first leg 44) of Pille and the Office Action defined second section (rack accessory 36) of Pille (see Fig. 5).

In view of the foregoing, Applicants respectfully submit that Pille does not disclose each and every feature of claims 9-11, 14 and 18 and therefore rejection under 35 USC §102(b) is inappropriate.

Applicants respectfully request reversal of this rejection.

- C) Claims 12, 13 and 15-28 are patentable under 35 U.S.C. §103(a) over U.S. Patent No. 3,289,854 (the Kauffman reference) in view of U.S. Patent No. 4,927,033 (the Patera reference)

The Office Action rejects claims 12, 13 and 15-28 under 35 U.S.C. §103(a) over the Kauffman reference in view of the Patera reference. Applicants respectfully traverse this rejection.

i) Claim 12 and 18

Patera does not remedy the deficiencies of Kauffman discussed above with regard to the anticipation rejection of claim 9, from which claims 12 and 18 depend.

Indeed, the Examiner does not allege that Patera teaches or suggests the feature of a first section being substantially non-rotating and being capable of being coupled to a vertical element of the crockery basket. The non rotating feature of article holder 10 of Patera results from it being attached to a horizontal tine 13. There is nothing to suggest that the non rotating feature of Patera could be used to attach the device of Kauffman to a vertical member in a non rotating manner.

Regarding the Office Action's confusion regarding claim 12, Applicants direct attention to Figs. 1 and 2 which show a receiving area (opposite retaining region 9) in the first section which holds the device at an intersection of a vertical basket element and a horizontal basket element.

ii) Claim 13

Patera does not remedy the deficiencies of Kauffman discussed above with regard to the anticipation rejection of claim 9, from which claim 13 depends.

Indeed, the Examiner does not allege that Patera teaches or suggests the feature of a first section being substantially non-rotating and being capable of being coupled to a vertical element of the crockery basket. The non rotating feature of article holder 10 of Patera results from it being attached to a horizontal tine 13. There is nothing to suggest that the non rotating feature of Patera could be used to attach the device of Kauffman to a vertical member in a non rotating manner.



Also, regarding claim 13, Applicants submit that it would not have been obvious to combine the parallel legs 32, 34 of Patera with the article retaining device 24 of Kauffman because neither reference teaches any benefit to doing so. As shown in Fig. 1, the interrupted (slotted) feature of second section 2 of the invention allows second section 2 to move past vertical basket element 3 when no object is being held. This means that when an object is being held, second section 2 is moved farther from its rest position than if second section 2 was not interrupted. This results in a higher retaining force as compared to a non interrupted device. This benefit is not recognized by Patera because the device of Patera is not shown as extending past a vertical line located in the interruption (slot). Note that the configuration shown in Figures 2 and 3 of Patera could use a non interrupted device because the device is made to attach to horizontal (not vertical) basket elements.

iii) Claim 17

Claim 17 includes the feature of an end region of the second section being solid such that it is not interrupted. The Office Action asserts the end region of Patera is solid. Applicants disagree with this assertion. Applicants submit that the end region of Patera is not solid, but is instead simply a loop of the same cross section as legs 32, 34.

iv) Claims 15 and 16

Claims 15 and 16 include the feature of the second section being a retaining clip interrupted along its vertical axis in such a manner that a vertical basket element can be guided through this interrupted section. The Office Action admits that Kauffman does not disclose an interrupted clip and applies Patera as having an interrupted second portion. Applicants submit that it would not have been obvious to combine legs 32, 34 of Patera with retainer 26 of Kauffmann because to do so would make it difficult to insert a glass or other container between retainer 26 and element 27. Since retainer 26 has only a small curved section at its upper end, an interrupted section could result in the upper end of retainer 26 resting against element 27 such that it would be very difficult to insert a glass or other

container between retainer 26 and element 27. Also, Patera does not suggest a clip interrupted along its vertical axis in such a manner that a vertical basket element can be guided through this interrupted section. Patera shows in Fig. 2 article engaging member 30 located between tines 66 and 67 and makes no suggestion that article engaging member 30 could be located such that one of tines is located between legs 32, 34.

Claims 15 and 16 include the feature of an end region of the second section being solid such that it is not interrupted. The Office Action asserts the end region of Patera is solid. Applicants disagree with this assertion. Applicants submit that the end region of Patera is not solid, but is instead simply a loop of the same cross section as legs 32, 34.

Claims 19-21 depend from claim 15.

Claims 22-24 depend from claim 16.

v) Claim 25

Claim 25 includes the feature of the second section being a retaining clip interrupted along its vertical axis defining two arms, the arms being adapted to receive one of the vertical basket elements in between the two arms. The Office Action admits that Kauffman does not disclose an interrupted clip and applies Patera as having an interrupted second portion. Applicants submit that it would not have been obvious to combine legs 32, 34 of Patera with retainer 26 of Kauffmann because to do so would make it difficult to insert a glass or other container between retainer 26 and element 27. Since retainer 26 has only a small curved section at its upper end, an interrupted section could result in the upper end of retainer 26 resting against element 27 such that it would be very difficult to insert a glass or other container between retainer 26 and element 27. Also, Patera does not suggest a clip interrupted along its vertical axis in such a manner that a vertical basket element can be guided through this interrupted section. Patera shows in Fig. 2 article engaging member 30 located between tines 66 and 67 and makes no suggestion that article engaging member 30 could be located such that one of tines is located between legs 32, 34.

Claim 25 includes the feature of an end region of the second section being solid such that it is not interrupted. The Office Action asserts the end region of Patera is solid. Applicants disagree with this assertion. Applicants submit that the end region of Patera is not solid, but is instead simply a loop of the same cross section as legs 32, 34.

Claims 26-28 depend from claim 25.

In view of the foregoing, Applicant respectfully submits that the combination of Kauffman and Patera does not suggest the features of claims 12, 13 and 15-28 and therefore rejection under 35 USC §103(a) is inappropriate.

Applicants respectfully request reversal of this rejection.

(8) CONCLUSION

In view of the foregoing discussion, Appellants respectfully request reversal of the Examiner's rejection.

Respectfully submitted,

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CLAIMS APPENDIX

1 – 8. (Canceled)

9. (Rejected) A fixing device for fixing the location of an object in a dishwasher, comprising:

a first section that can be coupled to a crockery basket of the dishwasher; and

a second section extending substantially vertically forming a curve, the first section being substantially non-rotating and being capable of being coupled to a vertical element of the crockery basket.

10. (Rejected) The fixing device for an object according to claim 9, wherein the second section is a retaining clip that it can be deformed manually.

11. (Rejected) The fixing device for an object according to claim 9, wherein the first section is a connecting region having at least one receiving area suitable for fixing to a vertical basket element of the dishwasher.

12. (Rejected) The fixing device for an object according to claim 11, wherein the first section is a connecting region that includes at least one receiving area suitable for fixing to a horizontal basket element of the dishwasher.

13. (Rejected) The fixing device for an object according to claim 9, wherein the second section is a retaining clip interrupted along its vertical axis in such a manner that a vertical basket element can be guided through this interrupted section.

14. (Rejected) The fixing device for an object according to claim 9, wherein the first section is a connecting region having a retaining region that points away from the vertical basket element in the direction of the second section embodied as a retaining clip.

15. (Rejected) A fixing device for fixing the location of an object in a dishwasher, comprising:

- a first section that can be coupled to a crockery basket of the dishwasher; and

- a second section extending substantially vertically forming a curve, the first section being connectable to a cutlery basket of a dishwasher,

- wherein the second section is a retaining clip interrupted along its vertical axis in such a manner that a vertical basket element can be guided through this interrupted section, and

- an end region of the second section is solid such that it is not interrupted along the vertical axis of the second section, the end region being located at an end of the second section opposite the first section.

16. (Rejected) A fixing device for fixing the location of an object in a dishwasher, comprising:

a first section that can be coupled to a crockery basket of the dishwasher; and

a second section extending substantially vertically forming a curve, the first section being non-detachably connectable to a region of the crockery basket,

wherein the second section is a retaining clip interrupted along its vertical axis in such a manner that a vertical basket element can be guided through this interrupted section, and

an end region of the second section is solid such that it is not interrupted along the vertical axis of the second section, the end region being located at an end of the second section opposite the first section.

17. (Rejected) The fixing device for an object according to claim 13, wherein an end region of the second section is solid such that it is not interrupted along the vertical axis of the second section, the end region being located at an end of the second section opposite the first section.

18. (Rejected) The fixing device for an object according to claim 9, further comprising a retaining region protruding from the first section and located between the first section and the second section.

19. (Rejected) The fixing device according to claim 15, wherein the second section is a retaining clip that it can be deformed manually.

20. (Rejected) The fixing device according to claim 19, further comprising a retaining region protruding from the first section and located between the first section and the second section.

21. (Rejected) The fixing device according to claim 15, further comprising a retaining region protruding from the first section and located between the first section and the second section.

22. (Rejected) The fixing device according to claim 16, wherein the second section is a retaining clip that it can be deformed manually.

23. (Rejected) The fixing device according to claim 22, further comprising a retaining region protruding from the first section and located between the first section and the second section.

24. (Rejected) The fixing device according to claim 16, further comprising a retaining region protruding from the first section and located between the first section and the second section.

25. (Rejected) A crockery basket for use in a dishwasher, comprising:

- a plurality of vertical basket elements;
- a fixing device for fixing the location of an object in the basket, the fixing device having
  - a first section that is coupled to the basket; and
  - a second section extending substantially vertically forming a curve,

wherein the second section is a retaining clip interrupted along its vertical axis defining two arms, the arms being adapted to receive one of the vertical basket elements in between the two arms, and

an end region of the second section is solid such that it is not interrupted along the vertical axis of the second section, the end region being located at an end of the second section opposite the first section and being attached to the two arms.

26. (Rejected) The basket according to claim 25, wherein the second section is a retaining clip that it can be deformed manually.



27. (Rejected) The basket according to claim 26, further comprising a retaining region protruding from the first section and located between the first section and the second section.

28. (Rejected) The basket according to claim 25, further comprising a retaining region protruding from the first section and located between the first section and the second section.

EVIDENCE APPENDIX

None

RELATED APPEALS APPENDIX

None